

STATE COMPLAINT PROCEDURES

State Complaint System Relating to the Education of Children with Disabilities

To request information regarding federal and state special education requirements, please contact:

Arizona Department of Education
Exceptional Student Services
Dispute Resolution Unit
1535 West Jefferson Street, Bin #62
Phoenix, Arizona 85007
Phone: (602) 542-3084
FAX: (602) 364-0641
<http://www.azed.gov/ess/dispute>

Such requests for information may include:

- explanations and clarifications;
- copies of special education laws and regulations; or
- referrals to other, more appropriate, persons or processes.

It is suggested that anyone who has a question or concern about the education of a child with a disability first contact the administration of the public education agency (PEA) (traditional public school, charter school) where the child attends school. It is usually best to first contact the person in charge of special education.

When the Arizona Department of Education/Exceptional Student Services (ADE/ESS) Division is contacted about concerns with a child's special education program, the ADE/ESS staff will inform the person(s) of the procedural safeguard protections under the Individuals with Disabilities Education Act (IDEA). There are three formal dispute resolution options: access to mediation, state complaints, or due process. The ADE/ESS staff will provide specific information related to dispute resolution to the person(s), if they so desire. It should be noted that the purpose of this document is to specifically describe the State Complaint System.

State Complaint System

Individuals or organizations may file signed written complaints with the ADE/ESS if they believe an agency responsible for the provision of special education services is not in compliance with state and federal laws or regulations.

State Complaint Procedures

The complaint procedures outlined in this section are available for resolving any complaint that meets the required criteria that follow. The complaint letter:

- Must be in writing and signed (anonymous complaints will not be processed). As an option, parties may choose to use the State Complaint Form located on the ADE website www.azed.gov/ess/dispute/complaints/StateComplaintForm.doc

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- Must include a statement that the PEA has violated a requirement of Part B of IDEA, its implementing regulations, Arizona Revised Statutes, and/or the Arizona Administrative Code, but need not identify the specific law or regulation involved. The Arizona Department of Education does not have authority to investigate allegations that do not pertain to federal or state special education requirements.
- Must clearly identify the concern or the alleged violation as well as the facts upon which the allegation is based. (If needed, ADE/ESS will assist the complainant in clearly identifying the allegations.)
- Must include the name of the child or children associated with the specific complaint allegations.
- In the case of a homeless child or youth [within the meaning of section 725(2) of the McKinney-Vento Homeless Assistance Act (42 U.S.C. § 11434a(2))], must include available contact information for the child and the name of the school the child is attending.
- Must allege a violation that occurred not more than **one (1) year** from the date that the complaint is received.
- Must contain a proposed resolution of the problem to the extent known and available to the party at the time the complaint is filed.
- Should include contact information, including a daytime telephone number where the complainant can be reached, along with a mailing address.

The complaint form should be mailed to the Director of Dispute Resolution at the following address:

Arizona Department of Education
Exceptional Student Services
Dispute Resolution Unit
1535 West Jefferson Street, Bin #62
Phoenix, Arizona 85007

The party filing the complaint must forward a copy of the complaint to the public education agency (traditional public school, charter school) serving the child at the same time the party files the complaint with the Arizona Department of Education/Exceptional Student Services.

If the complainant is unable to put the complaint in written form and/or if the home language is other than English, the Arizona Department of Education will provide assistance. Please call ADE/ESS at 602-542-3084 or 1-800-352-4558.

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The complaint will be date stamped "*Identified as a Complaint*" upon a determination by the ADE/ESS that it meets the required components of a complaint. Only letters that include all of the criteria listed above will be considered a formal complaint.

The investigation will be concluded within 60 calendar days of the date the complaint was identified as a complaint. The investigative process will be conducted as follows:

- A complaint investigator will attempt to contact the complainant within a reasonable time following receipt of the letter alleging violations of federal or state special education law and/or regulations. The assigned investigator will verify that the allegations and facts are stated as the complainant intended and give the complainant an opportunity to submit additional information, either orally or in writing, to support the allegations. Any additional information or clarifications will be provided to the PEA agency under investigation.
- If needed, ADE/ESS will assist the complainant in clearly identifying the allegations. If there is missing information the complaint investigator will call or send a letter to the complainant requesting the missing information or clarifying issues. For those issues that do not fall under the authority of ADE/ESS to investigate, ADE/ESS will, in writing, direct the complainant to the most appropriate avenue to pursue resolution.
- A Letter of Acknowledgment will be sent, within **ten (10) calendar days**, to the complainant after a determination by the ADE/ESS that the letter meets the required components of a complaint. This letter will inform the complainant of:
 - ✓ the reference number that has been assigned to the complaint to facilitate tracking and monitoring of the complaint;
 - ✓ the name of the complaint investigator;
 - ✓ an outline of the general procedures that will be followed; and
 - ✓ timelines for the investigation.
- The same Letter of Acknowledgment, along with a copy of the complaint letter and any supporting documentation, will be sent within ten (10) calendar days to the chief administrator and the special education director, or coordinator, of the PEA against which the complaint has been filed.
- A copy of the complaint letter and supporting documentation will be forwarded to the education program specialist assigned to the PEA by ADE/ESS.
- Parties to the complaint are encouraged to resolve the complaint informally. Mediation is available in all circumstances and will be offered as a possibility for mutual resolution.
- If attempts to resolve the complaint through mediation or other alternative means of dispute resolution are unsuccessful, the complaint investigation process will continue as stated below. If informal resolution is successful, the complainant is asked to notify ADE/ESS in writing that the complaint is withdrawn. Otherwise, the complaint investigator will send a letter to both parties indicating that the complaint is considered withdrawn. Either party will have five (5) business days to notify ADE/ESS if that was not the intent of the parties and that they wish the investigation to continue.

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- An on-site investigation will be made unless a determination of compliance or noncompliance can be made by ADE/ESS through a review of the documentation provided.
- Any additional complaint issues submitted in writing by the same complainant 30 calendar days or less after the beginning of the 60 calendar day timeline will be investigated along with the original issues. Any additional complaint issues submitted by the same complainant more than 30 calendar days after the beginning of the 60 calendar day timeline, may, at the discretion of the Director of Dispute Resolution, be included in the original complaint or be logged and handled as a new complaint.
- The investigator will prepare a Letter of Findings upon the completion of the investigation. The Letter of Findings will include factual information, findings of compliance or noncompliance, and reasons for the final decision(s) as determined by ADE/ESS. Allegations that are not under the authority of ADE/ESS to investigate (e.g., issues regarding conflicts with staff members or discrimination) will be noted in the Letter of Findings and the complainant will be directed to the agency or personnel (e.g., the Office for Civil Rights or district administrative channels) that may more appropriately address these concerns.
- The investigation will be completed within **60 calendar days** of the filing of a formal complaint. At the conclusion of the investigation, ADE/ESS will issue a copy of the Letter of Findings to the complainant, the chief administrator of the PEA, the special education director or coordinator, and the ADE/ESS education program specialist assigned to assist the PEA.

The **60 calendar day** timeline may be extended by the Director of Dispute Resolution or a designee if:

- exceptional circumstances exist with respect to a particular complaint;
- the parties agree to extend the time to engage in mediation or other alternative means of dispute resolution; or
- the complainant requests a due process hearing on the same subject as the complaint. However, in accordance with the federal regulations, “any issue in the complaint that is not part of the due process action must be resolved using the time limit and procedures described.” (34 C.F.R. § 300.152(c))

If an extension is required, ADE/ESS will send a letter to all parties detailing the exceptional circumstance(s) and the date by which the Letter of Findings will be issued.

As stated in the federal regulations, the state educational agency (SEA) has the responsibility to “issue a written decision to the complainant that addresses each allegation in the complaint and contains— (i) findings of fact and conclusions; and (ii) the reasons for the SEA’s final decision.” (34 C.F.R. §300.152(a)(5)) Therefore, the Letter of Findings is final and not subject to appeal.

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Corrective Action Procedures

Where noncompliance is found, technical assistance, negotiation, and other types of corrective action will be required within the timelines set forth in the Letter of Findings.

NOTE: If applicable, in accordance with the federal regulations, the corrective action will address how the PEA will award the complainant compensatory services and/or monetary reimbursement for costs that should not have been incurred by the complainant. (34 C.F.R. § 300.151(b)(1))

If a Letter of Findings identifies noncompliance, the corrective action prescribed shall:

- require the immediate provision of services, or the immediate cessation of noncompliance, whichever is necessary;
- outline the necessary steps required to prevent the reoccurrence of noncompliance;
- require sufficient documentation to ensure that the noncompliance has been addressed; and
- eliminate the past effects of the violation(s).

The Letter of Findings will include a statement requesting that the complainant contact ADE/ESS if the PEA agency is not implementing the required corrective action.

Documentation of the corrective action submitted will be reviewed by the Corrective Action Compliance Monitor (CACM) and placed in the master complaint file maintained by ADE/ESS. If the corrective action documentation received is incomplete, not completed as specified in the Letter of Findings, or if no documentation is received from the PEA by the date specified in the Letter of Findings, then the following steps will be taken by the PEA and ADE/ESS:

1. The CACM will send a Letter of Inquiry to the PEA, with a copy provided to the complainant, within three (3) business days following the completion date specified in the Letter of Findings inquiring into the reason(s) the corrective action documentation was either incomplete, not submitted in the time frame specified, or not submitted at all.
2. The PEA must provide a Letter of Explanation to ADE/ESS within three (3) business days of receipt of the Letter of Inquiry explaining the circumstances surrounding the non-submission of or failure to complete the corrective action documentation.
 - If the circumstances are acceptable, then the CACM will compose a Letter of Understanding detailing: (a) the CACM's concerns and the PEA's explanation, (b) any decisions made to resolve the problem, and (c) a new negotiated due date. The CACM will send/fax this letter within five (5) business days of receipt of the Letter of Explanation to the special education director or coordinator of the PEA and the complainant.

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If the circumstances are unacceptable or the PEA does not respond to the Letter of Inquiry as noted above, then the CACM will compose a Letter of Enforcement. (See number 3 below.)

- If the corrective action documentation submitted was not completed as specified in the Letter of Findings, the CACM will inform the PEA that the corrective action item in question must be revised. A Letter of Clarification will be mailed and/or faxed within five (5) business days of receipt of the corrective action documentation to the special education director or coordinator and the complainant. A new due date for the revised corrective action will be assigned in this letter. If deemed appropriate, technical assistance will be offered in collaboration with the ADE/ESS education program specialist assigned to assist the PEA.
3. If, after the steps outlined above have been taken, the corrective action documentation received remains incomplete, has not been received by ADE/ESS, or the corrective action has not been completed as specified in the Letter of Findings, the CACM will send a Letter of Enforcement to the chief administrator of the PEA, with a copy to the special education director or coordinator and the complainant. The Letter of Enforcement will be sent within **seven (7) business days** of the date of the Letter of Inquiry if the PEA does not respond as specified, or within **five (5) business days** of the negotiated due date of corrective action noted in the Letter of Understanding or Letter of Clarification. The letter will detail the corrective action items that are incomplete, the corrective action items that were not completed as specified in the Letter of Findings, or those items that have not been received. In this letter, the CACM will inquire as to what ADE/ESS can do to assist in expediting the completion of the required corrective action.

The Letter of Enforcement will outline which of the following enforcement options will be taken:

- interruption of federal funds;
- withholding of federal or state funds;
- redirection of federal funds to ensure the child receives a free appropriate public education (FAPE); or
- if applicable, report violations to a sponsoring entity for charter schools and seek remedies through the appropriate board.

Once the corrective action documentation has been received, reviewed, and accepted by ADE/ESS, a Letter of Completion will be sent to the chief administrator, the special education director or coordinator of the PEA, the ADE/ESS education program specialist assigned to assist the PEA and the complainant within five (5) business days.

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Children in Private Schools – Enrolled by Their Parents

Allegations that a public education agency has failed to meet the requirements regarding children in private schools (found at 34 C.F.R. §§300.132–300.135 and §§300.137 –300.144) may be addressed through the state complaint procedures outlined above.

Private Schools – Complaints by School Officials

A private school official has the right to submit a complaint to the ADE/ESS that the PEA did not engage in consultation that was meaningful and timely or did not give due consideration to the views of the private school official.

If the private school official wishes to submit a complaint, the official must provide to the ADE/ESS the basis of the noncompliance by the PEA with the applicable private school provisions in 34 C.F.R. §§300.132 through 300.135 and §§300.137 through 300.144 and the PEA must forward the appropriate documentation to the SEA.

If the private school official is dissatisfied with the decision of the SEA, the official may submit a complaint to the Secretary by providing the information on noncompliance described in 34 C.F.R. §300.136(b)(1) of this section and the SEA must forward the appropriate documentation to the Secretary. [34 C.F.R. § 300.136; 20 U.S.C. § 1412(a)(10)(A)(v)]